

Dept. of Health and Human Services

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(2) The employee. Such notice must include—

- (i) The appeal decision; and
- (ii) An explanation that the employee and his or her household members, if applicable, may appeal a redetermination of eligibility that occurs as a result of the appeal decision.

(3) The Exchange.

(1) *Implementation of the appeal decision.* After receipt of the notice under paragraph (k)(3) of this section, if the appeal decision affects the employee's eligibility, the Exchange must promptly:

(1) Redetermine the employee's eligibility and the eligibility of the employee's household members, if applicable, in accordance with the standards specified in § 155.305; or

(2) Notify the employee of the requirement to report changes in eligibility as described in § 155.330(b)(1).

(m) *Appeal record.* Subject to the requirements of § 155.550 and paragraph (h) of this section, the appeal record must be accessible to the employer and to the employee in a convenient format and at a convenient time.

[78 FR 54136, Aug. 30, 2013, as amended at 79 FR 30349, May 27, 2014; 81 FR 12345, Mar. 8, 2016; 81 FR 94179, Dec. 22, 2016]

Subpart G—Exchange Functions in the Individual Market: Eligibility Determinations for Exemptions

SOURCE: 78 FR 39523, July 1, 2013, unless otherwise noted.

§ 155.600 Definitions and general requirements.

(a) *Definitions.* For purposes of this subpart, the following terms have the following meaning:

Applicant means an individual who is seeking an exemption for him or herself through an application submitted to the Exchange.

Application filer means an applicant, an individual who is liable for the shared responsibility payment in accordance with section 5000A of the Code for an applicant, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for an applicant.

Exemption means an exemption from the shared responsibility payment.

Health care sharing ministry has the same meaning as it does in section 5000A(d)(2)(B)(ii) of the Code.

Indian tribe has the same meaning as it does in section 45A(c)(6) of the Code.

Required contribution has the same meaning as it does in section 5000A(e)(1)(B) of the Code.

Required contribution percentage means the product of eight percent and the rate of premium growth over the rate of income growth for the calendar year, rounded to the nearest one-hundredth of one percent.

Shared responsibility payment means the payment imposed with respect to a non-exempt individual who does not maintain minimum essential coverage in accordance with section 5000A(b) of the Code.

Tax filer has the same meaning as it does in § 155.300(a).

(b) *Attestation.* For the purposes of this subpart, any attestation that an applicant is to provide under this subpart may be made by the application filer on behalf of the applicant.

(c) *Reasonably compatible.* For purposes of this subpart, the Exchange must consider information through electronic data sources, other information provided by the applicant, or other information in the records of the Exchange to be reasonably compatible with an applicant's attestation if the difference or discrepancy does not impact the eligibility of the applicant for the exemption or exemptions for which he or she applied.

(d) *Accessibility.* Information, including notices, forms, and applications, must be provided to applicants in accordance with the standards specified in § 155.205(c).

(e) *Notices.* Any notice required to be sent by the Exchange to an individual in accordance with this subpart must be provided in accordance with the standards specified in § 155.230.

[78 FR 39523, July 1, 2013, as amended at 79 FR 30349, May 27, 2014]

§ 155.605 Eligibility standards for exemptions.

(a) *Eligibility for an exemption through the Exchange.* Except as specified in

paragraph (g) of this section, the Exchange must determine an applicant eligible for and issue a certificate of exemption for any month if the Exchange determines that he or she meets the requirements for one or more of the categories of exemptions described in this section for at least one day of the month.

(b) *Duration of single exemption.* Except as specified in paragraphs (c)(2) and (d) of this section, the Exchange may provide a certificate of exemption only for the calendar year in which an applicant submitted an application for such exemption.

(c) *Religious conscience.* (1) The Exchange must determine an applicant eligible for an exemption for any month if the applicant is a member of a recognized religious sect or division described in section 1402(g)(1) of the Code, and an adherent of established tenets or teachings of such sect or division, for such month in accordance with section 5000A(d)(2)(A) of the Code.

(2) *Duration of exemption for religious conscience.* (i) The Exchange must grant the certificate of exemption specified in this paragraph to an applicant who meets the standards provided in paragraph (c)(1) of this section for a month on a continuing basis, until the month after the month of the individual's 21st birthday, or until such time that an individual reports that he or she no longer meets the standards provided in paragraph (c)(1) of this section.

(ii) If the Exchange granted a certificate of exemption in this category to an applicant prior to his or her reaching the age of 21, the Exchange must send the applicant a notice upon reaching the age of 21 informing the applicant that he or she must submit a new exemption application to maintain the certificate of exemption.

(3) The Exchange must make an exemption in this category available prospectively or retrospectively.

(d) *Hardship—(1) General.* The Exchange must grant a hardship exemption to an applicant eligible for an exemption for at least the month before, the month or months during which, and the month after a specific event or circumstance, if the Exchange determines that:

(i) He or she experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she had a significant, unexpected increase in essential expenses that prevented him or her from obtaining coverage under a qualified health plan;

(ii) The expense of purchasing a qualified health plan would have caused him or her to experience serious deprivation of food, shelter, clothing or other necessities; or

(iii) He or she has experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.

(2) *Lack of affordable coverage based on projected income.* The Exchange must determine an applicant eligible for an exemption for a month or months during which he or she, or another individual the applicant attests will be included in the applicant's family, as defined in 26 CFR 1.36B–1(d), is unable to afford coverage in accordance with the standards specified in section 5000A(e)(1) of the Code, provided that—

(i) Eligibility for this exemption is based on projected annual household income;

(ii) An eligible employer-sponsored plan is only considered under paragraphs (d)(4)(iii) and (iv) of this section if it meets the minimum value standard described in §156.145 of this subchapter.

(iii) For an individual who is eligible to purchase coverage under an eligible employer-sponsored plan, the Exchange determines the required contribution for coverage such that—

(A) An individual who uses tobacco is treated as not earning any premium incentive related to participation in a wellness program designed to prevent or reduce tobacco use that is offered by an eligible employer-sponsored plan;

(B) Wellness incentives offered by an eligible employer-sponsored plan that do not relate to tobacco use are treated as not earned;

(C) In the case of an employee who is eligible to purchase coverage under an eligible employer-sponsored plan sponsored by the employee's employer, the required contribution is the portion of the annual premium that the employee

would pay (whether through salary reduction or otherwise) for the lowest cost self-only coverage.

(D) In the case of an individual who is eligible to purchase coverage under an eligible employer-sponsored plan as a member of the employee's family, as defined in 26 CFR 1.36B-1(d), the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost family coverage that would cover the employee and all other individuals who are included in the employee's family who have not otherwise been granted an exemption through the Exchange.

(iv) For an individual who is ineligible to purchase coverage under an eligible employer-sponsored plan, the Exchange determines the required contribution for coverage in accordance with section 5000A(e)(1)(B)(ii) of the Code, inclusive of all members of the family, as defined in 26 CFR 1.36B-1(d), who have not otherwise been granted an exemption through the Exchange and who are not treated as eligible to purchase coverage under an eligible employer-sponsored plan, in accordance with paragraph (d)(4)(ii) of this section. If there is not a bronze level plan offered through the Exchange in the individual's county, the Exchange must use the annual premium for the lowest cost Exchange metal level plan, excluding catastrophic coverage, available in the individual market through the Exchange in the State in the county in which the individual resides to determine whether coverage exceeds the affordability threshold specified in section 5000A(e)(1) of the Code; and

(v) The applicant applies for this exemption prior to the last date on which he or she could enroll in a QHP through the Exchange for the month or months of a calendar year for which the exemption is requested.

(vi) The Exchange must make an exemption in this category available prospectively, and provide it for all remaining months in a coverage year, notwithstanding any change in an individual's circumstances.

(3) *Ineligible for Medicaid based on a State's decision not to expand.* The Exchange must determine an applicant

eligible for an exemption for a calendar year if he or she would be determined ineligible for Medicaid for one or more months during the benefit year solely as a result of a State not implementing section 2001(a) of the Affordable Care Act.

(e) *Eligibility for an exemption through the IRS.* Hardship exemptions in this paragraph (e) can be claimed on a Federal income tax return without obtaining an exemption certificate number. The IRS may allow an individual to claim the hardship exemptions described in this paragraph (e) without requiring an exemption certificate number from the Exchange.

(1) *Filing threshold.* The IRS may allow an applicant to claim an exemption specified in HHS Guidance published September 18, 2014, entitled, "Shared Responsibility Guidance—Filing Threshold Hardship Exemption," and in IRS Notice 2014-76, section B (see <https://www.cms.gov/ccio/>).

(2) *Self-only coverage in an eligible employer-sponsored plan.* The IRS may allow an applicant to claim an exemption specified in HHS Guidance published November 21, 2014, entitled, "Guidance on Hardship Exemptions for Persons Meeting Certain Criteria," and in IRS Notice 2014-76, section A (see <https://www.cms.gov/ccio/>).

(3) *Eligible for services through an Indian health care provider.* The IRS may allow an applicant to claim the exemption specified in HHS Guidance published September 18, 2014, entitled, "Shared Responsibility Guidance—Exemption for Individuals Eligible for Services through an Indian Health Care Provider," and in IRS Notice 2014-76, section E (see <https://www.cms.gov/ccio/>).

(4) *Ineligible for Medicaid based on a State's decision not to expand.* The IRS may allow an applicant to claim the exemption specified in HHS Guidance published November 21, 2014, entitled, "Guidance on Hardship Exemptions for Persons Meeting Certain Criteria," and in IRS Notice 2014-76, section F (see <https://www.cms.gov/ccio/>).

(5) *General hardship.* The IRS may allow an applicant to claim the exemption specified in HHS Guidance published September 12, 2018, entitled,

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“Guidance on Claiming a Hardship Exemption through the Internal Revenue Service (IRS)” (see <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Authority-to-Grant-HS-Exemptions-2018-Final-91218.pdf>) and in IRS Notice 2019–05 (see <https://www.irs.gov/pub/irs-drop/n-19-05.pdf>), for the 2018 tax year.

[78 FR 39523, July 1, 2013, as amended at 79 FR 30349, May 27, 2014; 80 FR 10868, Feb. 27, 2015; 81 FR 12345, Mar. 8, 2016; 83 FR 17063, Apr. 17, 2018; 84 FR 17567, Apr. 25, 2019]

§ 155.610 Eligibility process for exemptions.

(a) *Application.* Except as specified in paragraphs (b) and (c) of this section, the Exchange must use an application established by HHS to collect information necessary for determining eligibility for and granting certificates of exemption as described in § 155.605.

(b) *Alternative application.* If the Exchange seeks to use an alternative application, such application, as approved by HHS, must request the minimum information necessary for the purposes identified in paragraph (a) of this section.

(c) *Exemptions through the eligibility process for coverage.* If an individual submits the application described in § 155.405 and then requests an exemption, the Exchange must use information collected for purposes of the eligibility determination for enrollment in a QHP and for insurance affordability programs in making the exemption eligibility determination, and must not request duplicate information or conduct repeat verifications to the extent that the Exchange finds that such information is still applicable, where the standards for such verifications adhere to the standards specified in this subpart.

(d) *Filing the exemption application.* The Exchange must—

(1) Accept the application from an application filer; and

(2) Provide the tools to file an application.

(3) For applications submitted before October 15, 2014, the Exchange must, at a minimum, accept the application by mail.

(e) *Collection of Social Security Numbers.* (1) The Exchange must require an

applicant who has a Social Security number to provide such number to the Exchange.

(2) The Exchange may not require an individual who is not seeking an exemption for himself or herself to provide a Social Security number, except as specified in paragraph (e)(3) of this section.

(3) The Exchange must require an application filer to provide the Social Security number of a tax filer who is not an applicant only if an applicant attests that the tax filer has a Social Security number and filed a tax return for the year for which tax data would be utilized for verification of household income and family size for an exemption under § 155.605(g)(2) that requires such verification.

(f) *Determination of eligibility; granting of certificates.* The Exchange must determine an applicant's eligibility for an exemption in accordance with the standards specified in § 155.605, and grant a certificate of exemption to any applicant determined eligible.

(g) *Timeliness standards.* (1) The Exchange must determine eligibility for exemption promptly and without undue delay.

(2) The Exchange must assess the timeliness of eligibility determinations made under this subpart based on the period from the date of application to the date the Exchange notifies the applicant of its decision.

(h) *Exemptions for previous tax years.*

(1) Except for the exemptions described in § 155.605(c) and (d), after December 31 of a given calendar year, the Exchange may decline to accept an application for an exemption that is available retrospectively for months for such calendar year, and must provide information to individuals regarding how to claim an exemption through the tax filing process.

(2) The Exchange will only accept an application for an exemption described in § 155.605(d)(1) during one of the 3 calendar years after the month or months during which the applicant attests that the hardship occurred.

(i) *Notification of eligibility determination for exemptions.* The Exchange must provide timely written notice to an applicant of any eligibility determination made in accordance with this subpart.